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Supreme Court, U.S.
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No. 95-1522

In The

Supreme Court of the United States

October Term, 1995

MANOLO DE LOS SANTOS,

Petitioner,

v.

CAMBRIDGE TANKERS, INC.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY TO BRIEF IN OPPOSITION

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QUESTION PRESENTED

Is a conflict in the precise wording of the Circuit Pattern Instructions on the definition of unseaworthiness an important question for this Court to decide?

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REASON FOR REPLY

Respondent's Opposition relies upon a federal judge's discretion to select the particular language of an instruction as grounds for the omission of a theory of liability made by a state court judge applying federal law. Petitioner deems this a new point within the meaning of Supreme Court Rule 15.6 and replies to it herein.

Respondent also argues that the precise wording of jury instructions on unseaworthiness is not an important issue for this Court to decide. This, too, is a new point to be addressed by this reply.

ARGUMENT

1. Respondent confuses the discretion vested in trial judges to " . . . frame the form and language . . . " of jury instructions in both civil (see *Ferrer v. Richards Mfg. Co.*, 733 F.2d 526, 530 (8th Cir. 1984) (Opp. 4)) and criminal (see *United States v. Hayes*, 794 F.2d 1348, 1350-1351 (9th Cir. 1986) and *United States v. Goldblatt*, 813 F.2d 619, 623 (3d Cir. 1987) (Opp.4)) cases with the fundamental entitlement of every litigant " . . . to a jury instruction on a . . . theory if the theory has a basis in law and in the record". *Hayes, supra.*

This entitlement makes it " . . . the duty of a trial court in any jury trial is to give instructions which are meaningful, not in terms of some abstract case, but which can be understood and given effect by the jury once it

resolves the issues of fact which are in dispute." *Structural Rubber Products v. Park Rubber*, 749 F.2d 707, 723 text accompanying fn. 15 (D.C. Cir. 1984), citing 9 *Wright and Miller Federal Practice and Procedure* § 2556 at 659-60 fn. 3 (1971), updated in 1995 at pages 438-450 of Volume 9A, collecting cases that show the distinction between form and substance in jury instructions.

"Instructions should guide the jury's deliberations and are not mere technicalities in our legal system." *Houston v. Dutton*, 50 F.3d 381, 385-386 and fn. 1 (6th Cir. 1995) citing *O'Neal v. McAnich*, ___ U.S. ___,115 S.Ct 992, 996-997 (1995) which also shows that the precise wording of jury instructions is, indeed, an important question for this Court to decide, contrary to respondent's argument in this regard (Opp. 4). See also, *Friedman, Failed Enterprise: The Supreme Court's Habeus Reform*, 83 Calif. L. Rev. 485, 498 and fn. 80 (1995) and *Peck v. United States*, 73 F.3d 1220, 1228 and fn. 8 (2d Cir. 1995) both analyzing the role of instructional error in the decisions of this Court.

2. Moreover, an important issue is also presented to this Court when it involves ". . . . a subtle erosion of a statutory or legal principle . . . " such as the concept of unseaworthiness by reason of inadequate manpower. *Stern, Gressman, Shapiro and Geller, Supreme Court Practice* (7th Ed. 1993), 194 quoted text accompanying fn. 56; 190 text accompanying fn. 48, discussing the propensity of this Court to grant certiorari when lower courts have frustrated the congressional policy that juries determine liability in Seaman's and F.E.L.A. cases shown by *Wilkenson v. McCarthy*, 336 U.S. 53, 69 (1949), concurring opinion of Justice Douglas. See also, *Note, Supreme Court Certiorari Policy in Cases Arising Under the F.E.L.A.*, 69 *Harv. L. Rev.*

1441 (1956) where fn. 7 observes that the jury trial issues presented by F.E.L.A. cases are the same as those presented by the Jones Act in seaman's cases.

CONCLUSION IN REPLY

The petition should be granted for the additional reason that the conflict on the definition of unseaworthiness by reason of inadequate manpower between the Ninth Circuit and the Fifth Circuit Pattern Instructions as well as the settled teachings of this Court on the concept of unseaworthiness involves a subtle erosion of an essential legal principle of federal substantive law designed to protect the rights of seamen.

Respectfully submitted,

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